

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

August 12, 2010

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:10HD-125

HAWAII

Mutual Cancellation of General Lease No. S-4018; Re-Issuance of a Direct Lease to First United Protestant Church of Hilo, United Church of Christ for Religious Services and Educational Purposes; and Consent to Sublease Between the First United Protestant Church of Hilo, United Church of Christ, Lessee to the Trustees of the Estate of Bernice Pauahi Bishop, Sublessee, Piihonua, South Hilo, Hawaii, Tax Map Key: (3) 2-3-27:16

APPLICANT:

First United Protestant Church of Hilo, United Church of Christ, a domestic non-profit corporation whose business and mailing address is 1350 Waianuenue Avenue, Hilo, Hawaii 96720.

LEGAL REFERENCE:

Section 171-43.1 and 36(a)(6), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Piihonua, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-3-27:16, as shown on the attached map labeled Exhibit A.

AREA:

3.572 acres, more or less.

ZONING:

State Land Use District:	Urban
County of Hawaii CZO:	RS-10

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO ____x

CURRENT USE STATUS:

Encumbered by General Lease No. S-4018, The First United Protestant Church of Hilo, for church and allied purposes. Lease to expire on October 5, 2031. Last rental reopening occurred on October 6, 1996. Next rental reopening is October 6, 2011. Rent is currently \$4,125 per annum.

PROPERTY CHARACTERISTICS:

Utilities - Electricity, telephone, water
Slope - generally level with some sloping
Elevation - 300 foot
Rainfall - 120-180 inches per year
SCS Soil Series - Hilo silty clay loam
Land Study Bureau – Not applicable
Legal access to property – Staff has verified that there is legal access to the property off of Waianuenue Avenue.

Subdivision – Staff has verified that the subject property is a legally subdivided lot.

Encumbrances – None

LEASE TERMS AND CONDITIONS:

LEASE TERM:

Sixty-five (65) years.

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

ANNUAL RENT:

\$480.00 per annum.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

At the 10th, 20th, 30th, 40th, 50th, 60th years of the lease term, by staff or independent appraisal.

PERFORMANCE BOND:

Twice the annual rental amount.

SUBLEASE TERMS AND CONDITIONS:

SUBLEASE CHARACTER OF USE:

Educational purposes.

TERM OF SUBLEASE:

Effective date of new lease to be issued to First United Protestant Church of Hilo, United Church of Christ to June 30, 2012.

ANNUAL SUBLEASE RENTAL:

\$26,400.00 pr annum.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>x</u>	NO <u> </u>
Registered business name confirmed:	YES <u>x</u>	NO <u> </u>
Applicant in good standing confirmed:	YES <u>x</u>	NO <u> </u>

SUBLESSEE:

Place of business registration confirmed:	YES <u>x</u>	NO <u> </u>
Registered business name confirmed:	YES <u>x</u>	NO <u> </u>
Good standing confirmed:	YES <u>x</u>	NO <u> </u>

APPLICANT REQUIREMENTS:

Not Applicable

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the

subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1 that states "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

BACKGROUND:

The Land Board at its meeting of October 8, 1965, under agenda Item F-8, approved the sale of a 65 year lease for church purposes at public auction. Our staff in Hilo conducted a public auction on October 6, 1966 at the State Office building. The successful bidder was The First United Protestant Church of Hilo. The upset rent was \$1,396. General Lease No. S-4018 was issued effective October 6, 1966.

The Chairperson on March 4, 2003 consented to the sublease between First United Protestant Church and the Trustees of the Estate of Bernice Pauahi Bishop. The sublease commenced on November 1, 2002 and expires on June 30, 2012. The sublease annual rental was \$24,000. Historically, religious organizations in Hawaii have offered education services to their members as well as the community. Since the primary use of the facility is a church and a pre-school is accessory and sponsored by the church, this use is consistent with the lease designation for "church and allied purposes."

General Lease No. S-4018 is scheduled for a lease reopening on October 6, 2011. Unlike other non-profits that obtained their lease from the Land Board, we are unable to recommend to the Land Board that this lease be amended because this lease was sold at public auction. Authority to negotiate a lease to an eleemosynary organization was granted to the Land Board by the Legislature around 1970. Instead of the State paying for the services of a real estate appraiser (\$1,500 to \$3,000) and a good, non-profit tenant becomes upset about the substantial rent increase, staff instead recommended the tenant request the lease be mutually cancelled and request the issuance of a new lease pursuant to Chapter 171-43.1, Hawaii Revised Statutes. This will be a win-win for the State and the tenant.

ANALYSIS OF THE DIRECT LEASE:

The highest and best use allowable in the county zoning is what currently exists. Applicant is not proposing to change the use.

Applicant has provided evidence of 501(c)(3) status, therefore qualifies for a direct lease.

Staff has requested information on the Applicant's operations, services, program measurements, budget and funding. [Exhibit B]

As of May 21, 2010, the Lessee is in compliance with all lease terms and conditions. Rent is paid up to July 5, 2010. Liability insurance expires on October 1, 2010. Lessee has posted a

\$8,250 surety bond. In the past two (2) years, no Notice of Default letters were issued.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Staff is recommending the new lease be for 65 years. All non-profits in good standing, lease terms should be similar and consistent.

Comments were solicited from:

DHHL	No objections
County of Hawaii, Planning	No objections
OHA	No response

DISCUSSION ON THE DIRECT LEASE:

As background, the Board of Land and Natural Resources (Board) typically issues leases to private individuals and entities via public auction. The new rent at reopening is established at fair market rental value by an appraisal. If the tenant or prospective tenant is an eleemosynary (charitable) organization, the Board may issue the lease, at a nominal rent, by direct negotiation. The statute providing the Board this authority is as follows:

§171-43.1 Lease to eleemosynary organizations. The board may lease, at a nominal consideration, by direct negotiation and without recourse to public auction, public lands to an eleemosynary organization which has been certified to be tax exempt under sections 501(c)(1) or 501(c)(3) of the Internal Revenue Code of 1986, as amended. The lands shall be used by such eleemosynary organizations for the purposes for which their charter was issued and for which they were certified by the Internal Revenue Service. [L 1970, c 83, §5; am L 1971, c 100, §1; am L 1982, c 202, §1; am L 1991, c 212, §3]

It is noted that the 501(c)(1) organization must be both organized by an Act of Congress and be an instrumentality of the United States, while the 501(c)(3) organization is a privately organized charitable organization.

Therefore, when considering lease dispositions to eleemosynary (charitable) organizations or religious organizations, the Board may issue the lease by public auction at fair market rent, or by direct negotiation at an amount below fair market rental (i.e., nominal rent). On May 13, 2005, the Land Board established a Minimum Rent Policy that stated, among other things, that the Minimum Rent for Lease be no less than \$480 per year. Land Division generally issues Leases at fair market rental value as determined by an appraiser or via public auction.

Staff believes "nominal rent" under Section 171-43.1, Hawaii Revised Statutes ought to be anywhere between fair market rent, or lower, but not lower than the minimum rent of \$480 per year.

There should be a reasonable and fair annual rent for all of Land Divisions' non-profit tenants. Therefore, staff is recommending the new annual rent be \$480.

DISCUSSION ON THE SUBLEASE:

The current sublease will be expiring on June 30, 2012. The sublease was approved on March 4, 2003. Our request to the Land Board is to cancel General Lease No. S-4018. If approved by the Land Board, this action will also cancel the sublease. Therefore, in order for the pre-school to continue its operations uninterrupted, staff is recommending the Board consent to the remaining 2 years, as is.

After June 30, 2012, if First United Protestant Church of Hilo, United Church of Christ decides to enter into a new sublease or extend the existing sublease, a new request must be submitted to the Land Board for its consent.

In our standard non-profit lease, the tenant is prohibited from subletting. Staff is requesting the subletting provision in this non-profit lease be revised to allow for subletting the whole or any portion of the premises, but only to a(n) non-profit organization with prior written approval of the Board; provided that the Board shall have the right to review and approve the rent to be charged to the proposed sublessee and that in the case where the Lessee is required to pay nominal rent, the receipts of the sublessee or any subsequent sublessees shall be included as part of the Lessee's gross receipts, and the Board shall have the right to revise the rent for the premises based upon the rental rate charged to the sublessee, and provided, further, that the rent may not be revised downward. For good cause, the Board may waive the requirement that the Lessee obtain prior written approval to rent or sublet all or any portion of the premises.

The revision staff is proposing will be similar to commercial, agricultural, ranching, etc. tenants, except the sublessee has to be a non-profit organization. Our State tenant shouldn't be profiting at the State's expense just because it is a non-profit as determined by Section 171-43.1, HRS. Revenues generated from the site (facility) should be applied towards paying the expenses for the site (facility). Therefore, it is reasonable that the State should review the tenants' financials. The tenant did not submit financial statements only a note indicating the audit is done in house and reviewed and approved by the Council of the Church. Staff contacted the tenant and informed them that any new sublease request would require submission of their financials.

RECOMMENDATION: That the Board:

1. Find that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the mutual cancellation of General Lease No. S-4018, The First United Protestant Church of Hilo, covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current mutual cancellation lease document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a direct lease to First United Protestant Church of Hilo, United Church of Christ covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current non-profit lease document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
 - D. Revise the subletting provision in the direct lease to allow for subletting the whole or any portion of the premises, but only to non-profit organizations.
4. Board consent to the sublease between First United Protestant Church of Hilo, United Church of Christ, as Sublessor, and Trustees of the Estate of Bernice Pauahi Bishop, as Sublessee, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following terms and conditions:
 - A. The standard terms and conditions of the most current consent to sublease form, as may be amended from time to time;

- B. Review and approval by the Department of the Attorney General; and
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

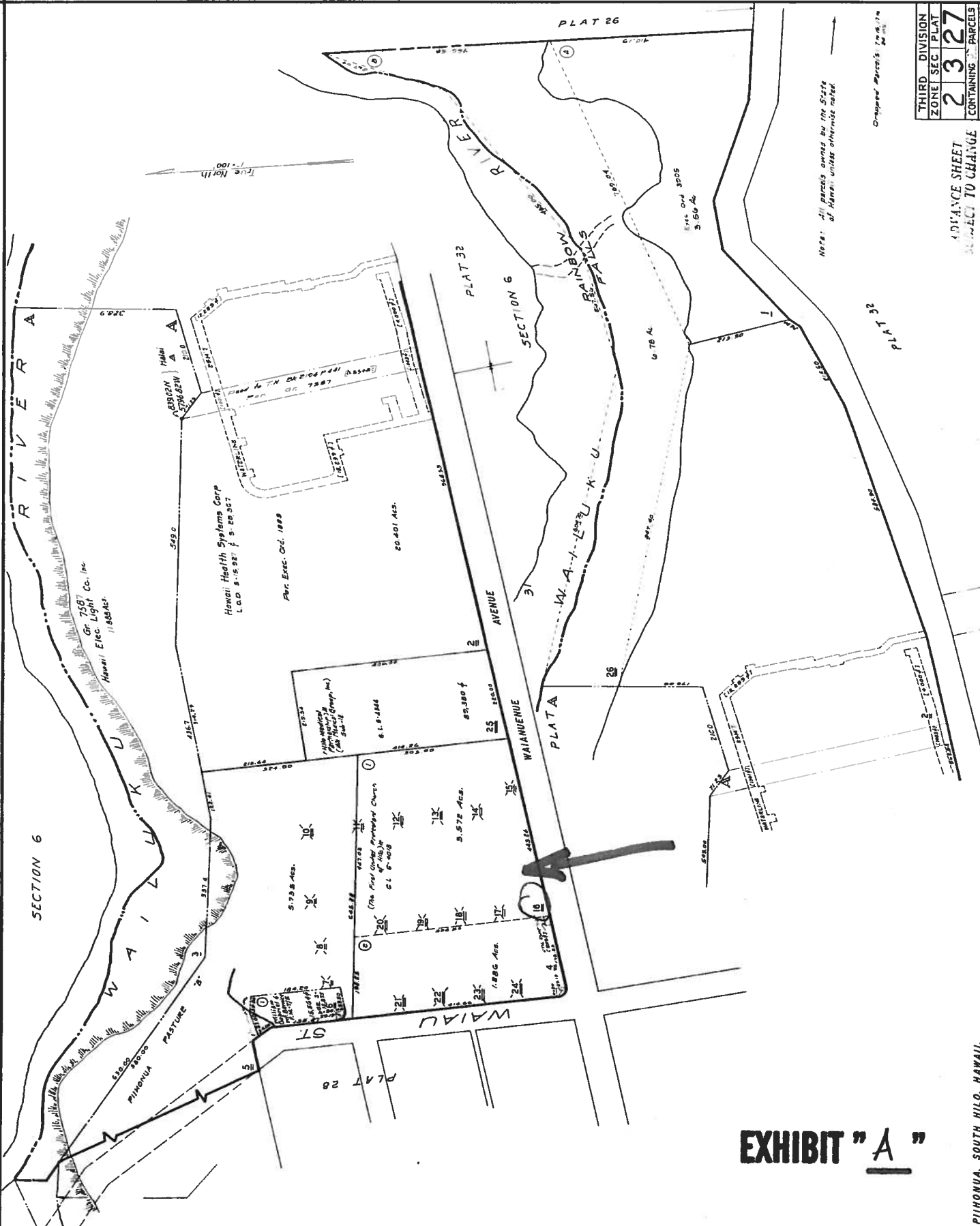


Charlene E. Unoki
Assistant Administrator

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



THIRD DIVISION	ZONE SEC	PLAT
2	3	27
ADVANCE SHEET		
CONTAINING PARCELS		
Scale 1 in = 100 ft		

ADVANCE SHEET
SUBJECT TO CHANGE

Note: All parcels owned by the State of Hawaii unless otherwise noted

Copyright 1981 by the State of Hawaii

PRINTED

EXHIBIT "A"

PIIKOIUA, SOUTH HILO, HAWAII.

Drawn by: 235C
Source: Survey Map
Oct. 1981

Scale 1 in = 100 ft
Date: 10/1/81
Sheet: 2 of 2
Project: 235C
Drawn by: 235C
Checked by: 235C
Approved by: 235C

APPLICATION AND QUALIFICATION QUESTIONNAIRE
(Non-Profit)

Write answers in the spaces provided. Attach additional sheets as necessary, clearly indicating the applicable section number.

Part I: General Information

1. Applicant's legal name: First United Protestant Church of Hilo
2. Applicant's full mailing address: 1350 Wai'anuenue Ave.
Hilo, Hawaii 96720
3. Name of contact person: Robert K. Ahia or Rodney Stepelton
Contact person Phone No.: 935-5914 Fax No.: _____
4. Applicant is interested in the following parcel:
Tax Map Key No.: 40394014-01 Location: Hilo, Hi
If Applicant is current lessee: General Lease No.: S-4018
5. When was Applicant incorporated? 2/23/1954
6. Attach the following:
 - A. Articles of Incorporation
 - B. Bylaws
 - C. List of the non-profit agency's Board of Directors
 - D. IRS 501(c)(3) or (c)(1) status determination
 - E. Tax clearances from State of Hawaii and respective county Real Property Tax Office.
 - F. Audited financial statements for the last three years. If not audited, explain why.
If Applicant is a new start-up, attach projected capital and operating budgets.
 - G. Any program material which describes eligibility requirements or other requirements to receive services

Part II: Qualification

7. Is Applicant registered to do business in Hawaii: ☒ Yes/☐ No
8. Has Applicant received tax exempt status from the Internal Revenue Service? ☒ Yes/☐ No
9. Is Applicant licensed or accredited in accordance with federal, State or county statutes, rules, ordinances, to conduct the proposed activities? N/A ☒ Yes/☐ No

List all such licenses and accreditations required: _____

10. Is Applicant in default or otherwise not in good standing with any State department (e.g. POS agency, DCCA, DLNR, etc.)? Yes ☐ No ☒

If yes, explain:

EXHIBIT "B"

11. Has Applicant had a State of Hawaii lease, permit, license, easement or sale in fee cancelled within the last five years? If yes, list:

Yes/No ☒

<u>Doc. No.</u>	<u>Type of Agreement</u>	<u>Term of Agreement</u>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>

12. Does Applicant have any policies which discriminate against anyone on the basis of race, creed, color, national origin, sex or physical handicap?

Yes/No ☒

If yes, explain:

13. Has Applicant received funding from a federal, State, or county government agency, the Aloha United Way, and/or a major private foundation within the last three years? Please list all such contracts below:

Yes/No ☒

<u>Agency</u>	<u>Contract Term</u>	<u>Contract Amount</u>
<hr/>	<hr/>	\$ <hr/>
<hr/>	<hr/>	\$ <hr/>
<hr/>	<hr/>	\$ <hr/>
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<hr/>	<hr/>	\$ <hr/>
<hr/>	<hr/>	\$ <hr/>

14. If Applicant has not received funding from a federal, State or county government agency, the Aloha United Way and/or a major private foundation during the past three years, describe Applicant's qualifications to effectively perform the proposed services, including but not limited to, grants or subsidies received from non-major, private funders and/or staff or Board members who possess significant experience in Applicant's service field.

See Attachment

Part III: Program Activities and Persons to be Served

15. What activities will be conducted on the premises to be leased?

See Attachment

16. What are the specific objectives of these activities?

See questions #14 and #15

17. Describe the community need for and the public benefit derived from these activities.

See Attachment

18. Describe the targeted population for these activities by: 1) age group, 2) gender, 3) ethnic background, 4) income level, 5) geographic location of residence, 6) special needs/disability, and 7) other applicable characteristic(s).

See Attachment

19. Describe all eligibility requirements of clients to participate in the activities, e.g. age, income level, ethnic background, income level, disability, etc.

All are welcome to participate in the life and activities of the Church. No eligibility requirements apply.

20. Do you require membership to participate in these activities?
If yes, list the requirements of becoming and remaining a member:

Yes/No

Membership in FUPC is not required for participation in Church activities, but it is encouraged as a way to deepen and intensify commitment and the religious experience.

21. How many unduplicated persons will engage in the activities annually?

Activity

Persons Per Year

See Attachment

22. Is State funding made available for the activities to be conducted on the leased premises?

Yes ☒ No

If yes, by which State agency: _____

23. List all activities to be conducted on the leased premises which require payment of excise taxes, e.g. subleasing, sale of products or services. Include an estimate of annual gross revenues from each activity.

Sub-lease Kamehameha Schools. Estimated annual gross revenues are, \$27,000.00

Development of the Land

24. Describe the proposed site development plan for the property, indicating the location and size of buildings, parking areas, landscaped areas and related uses. Attach sketch of plan if available.

No New development is planned

25. What improvements to the land do you intend to make and at what cost?

No new improvements to the land is planned.

26. How will the improvements be funded?

N/A

27. Describe all environmental, land use and other permitting requirements which must be met to develop the land as proposed.

N/A

28. Will you be subleasing any portion of the property? If yes, describe the sublease uses:

No

Part V: Notarized Certification

I/We hereby certify that the statements and information contained in this Application and Questionnaire, including all attachments, are true and accurate to the best of my/our knowledge and understand that if any statements are shown to be false or misrepresented, I/we may be disqualified from receiving a lease or my/our lease may be canceled.

Robert K. Ahia

Applicant Name

Applicant Name

By: Robert K. Ahia

By:

Its: Moderator

Its:

Date: 5-7-10

Subscribed and sworn to before me this

7th day of May, 2010.

Pamela J. Lamo

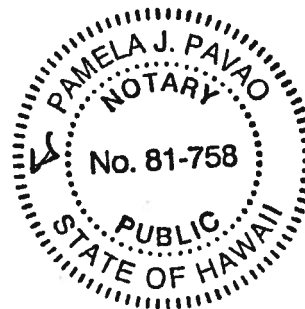
Notary Public

Pamela J. Lamo

County of: Hawaii

State of: Hawaii

My commission expires: 9/24/2013



Doc. Date: 5/7/2010 # Pages: 6

Notary Name: Pamela J. Pavao 3rd Circuit

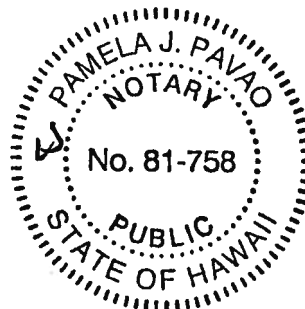
Doc. Description: Application and

Qualification Questionnaire

Pamela J. Lamo 5/7/2010

Notary Signature

Date



Application and Qualification Questionnaire (Non-Profit)

Attachment

Question No.14

We are an ordained and recognized fellowship of the United Church of Christ a congregational denomination. First United Protestant Church (FUPC) effectively performs the work of the church as the result of using private funds, paid staff, and volunteers. Dividends from a portfolio of mutual fund, proceeds from two private trusts, a sub-lease to Kamehameha Schools for a pre school, and congregational giving provide income to fund yearly operation. Our minister, secretary and organist each have many years of training and experience and are seasoned professionals. The Church Council is the executive body of the church and is composed of from 12 to 17 members as specified in the constitution and By-Laws. It is the policy making body of the church and has ultimate fiduciary responsibility for all church finances. FUPC has successfully operated in Hilo for well over a century.

Question No. 15

FUPC provides a community of faith for worship, Sunday school and youth activities, weddings and funerals, social activities, church meetings, counseling and occasional fund raisers like plant or craft sales. In addition, the buildings provide space for a pre-school, music recitals and performance, hula, choir practice and community meetings. As other needs in the congregation and community become evident, the church often adjusts to accommodate those needs.

Question No. 17

Like the truths in the U.S Constitution the needs and benefits above are self evident. Both the religious and community activities mentioned above are attempts to round out the individual and provide service to the community. The quest for religion and human interaction appears to be inherent in the basic nature of mankind.

Question No. 18

No matter who you are or where you are on life's journey you are welcome at FUPC. FUPC is open to all. The congregation reflects the age, gender, ethnicity, economics, and special needs found in the general population of Hawaii County, and more specifically, Hilo

Question No. 21

This number varies with a number of variables. It is estimated that between four and six hundred people will take part in at least one or more church activities each year.

Non – Profit Application Form, page 1, number 6, letter F

Audited Financial Statements for the last three, years. If not audited, explain why.

The annual audit of First United Protestant Church is done in house. The Financial statements of the church is reviewed and approved by the Council of the church.

293-
#2463-1
Affn: 1po

Person to Contact:

Mr. Charles E. McLaughlin

Telephone Number:

(202) 964-6197

Refer Reply to:

E:EO:O:R

Date:

February 17, 1976

Group Exemption Number:

13-5563020 1665 12 06 03
UNITED CHURCH OF CHRIST
297 PARK AVENUE SOUTH RM 75
NEW YORK NY 10010

1665

Dear Officer or Trustee:

We are contacting all group central organizations because the 1975 Form 990 and instructions require each central organization and its subordinates to show their group exemption number (GEN) in Part I, item 18(b), of Form 990.

Your group exemption number is shown above. Please advise any of your subordinates that are required to file an annual information return, Form 990, to place your group exemption number on their return.

Church central organizations are not required to file an annual information return. However, any of their subordinates that do not qualify as "integrated auxiliaries" of a church are required to file an information return, Form 990, and should include on that return the appropriate group exemption number. We are preparing a proposed amendment to the Income Tax Regulations which will define an integrated auxiliary of a church. When that amendment is published, we will send an information copy to holders of group exemption rulings under section 501(c)(3) of the Internal Revenue Code. (Organizations exempt under other provisions will not receive a copy.)

If you have any questions, please contact the person whose name and telephone number are shown above.

Thank you for your help in this matter.

Sincerely yours,

J. A. Tedesco
J. A. Tedesco, Director
Exempt Organizations Division

EXHIBIT "C"

M-0088 (2-76)

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
ACTING FIRST DEPUTY

LENORE N. OHYE
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

EXEMPTION NOTIFICATION

From the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Mutual Cancellation of General Lease No. S-4018; Re-Issuance of a New Direct Lease to First United Protestant Church of Hilo, United Church of Christ for Religious Services and Educational Purposes; and Consent to Sublease Between the First United Protestant Church of Hilo, United Church of Christ, Lessee to the Trustees of the Estate of Bernice Pauahi Bishop, Sublessee.

Project Number: PSF No. 10HD-125

Project Location: Piihonua, South Hilo, Hawaii, Tax Map Key: (3) 2-3-27:16

Project Description:

- a) Mutual Cancellation of General Lease No. S-4018;
- b) Re-Issuance of a New Direct Lease to First United Protestant Church of Hilo, United Church of Christ for Religious Services and Educational Purposes; and
- c) Consent to Sublease Between the First United Protestant Church of Hilo, United Church of Christ, Lessee to the Trustees of the Estate of Bernice Pauahi Bishop, Sublessee

Consulted Parties: Department of Hawaiian Home Lands, County of Hawaii, Planning Department, and the Office of Hawaiian Affairs.

Exemption Class No.: In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment under the following:

Exemption Class No. 1, which states, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

EXHIBIT "D"

Recommendation:

This action does not involve a change in the existing use established in October 6, 1966, therefore, will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

Laura H. Thielen, Chairperson

Date